

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

KIMBERLY METZINGER, f/k/a, KIMBERLY LINDSAY,

Index No. _____

Plaintiff(s),

*-against-*THE DIOCESE OF BUFFALO, N.Y.; and QUEEN OF
HEAVEN ROMAN CATHOLIC CHURCH SOCIETY OF
WEST SENECA, NEW YORK,**Summons**

Date Index No. Purchased:

October 25, 2019

Defendant(s).

To the above named Defendant(s)

THE DIOCESE OF BUFFALO, N.Y., 795 Main Street, Buffalo, Erie County, New York AND
QUEEN OF HEAVEN ROMAN CATHOLIC CHURCH SOCIETY OF WEST SENECA, NEW YORK, 4220 Seneca
Street, West Seneca, Erie County, New York

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is one or more defendant resides in Erie County, New York
which is located in Erie County, New York

Dated: New York, New York

October 25, 2019

SIMMONS HANLY CONROY LLC

by 

Paul J. Hanly, Jr.

Attorneys for Plaintiff

112 Madison Avenue, 7th Floor
New York, NY 10016
Tel.: 212-784-6401
Fax: 212-213-5949
phanly@simmonsfirm.com

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

KIMBERLY METZINGER, f/k/a, KIMBERLY LINDSAY,

Plaintiff,

v.

THE DIOCESE OF BUFFALO, N.Y.; and QUEEN OF HEAVEN
ROMAN CATHOLIC CHURCH SOCIETY OF WEST SENECA,
NEW YORK,

Defendants.

Index No.

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Kimberly Metzinger, formerly known as Kimberly Lindsay, by her attorneys Simmons Hanly Conroy LLC and the Law Offices of Mitchell Garabedian, brings this action against The Diocese of Buffalo, N.Y.; and Queen of Heaven Roman Catholic Church Society of West Seneca, New York, and alleges, on personal knowledge as to herself and on information and belief as to all other matters, as follows:

JURISDICTION AND VENUE

1. This Court has personal jurisdiction over the Defendants pursuant to CPLR 301 and 302, in that the Defendants reside in New York.
2. This Court has jurisdiction over this action because the amount of damages Plaintiff seeks exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.
3. Venue for this action is proper in the County of Erie pursuant to CPLR 503 in that one or more of the Defendants reside in this County and a substantial part of the events or omissions giving rise to the claims asserted herein occurred in this County.

PARTIES

4. Plaintiff Kimberly Metzinger, formerly known as Kimberly Lindsay ("Plaintiff") is an individual residing in Trinity, Florida.
5. Defendant The Diocese of Buffalo, N.Y. ("Diocese of Buffalo") is a religious

corporation organized pursuant to the New York Religious Corporations Law, with its principal office at 795 Main Street, Buffalo, Erie County, New York. The Diocese of Buffalo is a Roman Catholic diocese. At all relevant times, the Diocese of Buffalo created, oversaw, supervised, managed, controlled, directed and operated parishes or churches of the Diocese of Buffalo, including during all relevant times, Queen of Heaven Roman Catholic Church Society of West Seneca, New York.

6. Defendant Queen of Heaven Roman Catholic Church Society of West Seneca, New York ("Queen of Heaven") is a Roman Catholic parish within and under the authority of the Diocese of Buffalo and is a religious corporation organized pursuant to the Religious Corporations Law with its principal office at 4220 Seneca Street, West Seneca, Erie County, New York. At all relevant times, the Diocese of Buffalo created, oversaw, supervised, managed, controlled, directed and operated Queen of Heaven.

FACTS COMMON TO ALL CLAIMS

7. Plaintiff and her family were parishioners of and attended Queen of Heaven when Plaintiff was a minor child.

8. During the times relevant to the allegations set forth herein, Father Robert D. Moss ("Father Moss") was assigned by Defendant Diocese of Buffalo to be a priest at Queen of Heaven, where Plaintiff's family were parishioners. Father Moss died in 2018.

9. Through his positions at, within, or for the Defendants, Father Moss was put in direct contact with members of the Plaintiff's family, including Plaintiff, a minor parishioner of the Diocese of Buffalo.

10. From approximately 1980 when Plaintiff was approximately fifteen years of age, to approximately 1982 when Plaintiff was approximately seventeen years of age, Plaintiff attended private counseling sessions with Father Moss in the rectory at Queen of Heaven; and in Plaintiff's home in West Seneca, Erie County, New York.

11. Father Moss used such encounters, gained through his position at Queen of Heaven which granted him access to Plaintiff when Plaintiff was approximately fifteen

to approximately seventeen years of age, to sexually assault, sexually abuse, and/or have sexual contact with the Plaintiff on at least fifty occasions in violation of the laws of the State of New York.

Defendants' Responsibility for the Abuse Committed by Father Moss

12. At all times material hereto, Father Moss was under the management, supervision, employ, direction and/or control of the Defendants.

13. Through his positions at, within, or for the Defendants, Father Moss was put in direct contact with Plaintiff.

14. Father Moss used his position at, within, or for the Defendants and the implicit representations made by them about his character that accompanied that position, to gain Plaintiff's trust and confidence and to create an opportunity to be alone with, and to sexually touch, Plaintiff.

15. Defendants had the duty to reasonably manage, supervise, control and/or direct priests who served at Queen of Heaven, and specifically, had a duty not to aid pedophiles such as Father Moss by assigning, maintaining, and/or appointing them to positions with access to minors.

16. Defendants knew and/or reasonably should have known, and/or knowingly condoned, and/or covered up, the inappropriate and unlawful sexual activities of Father Moss, who sexually abused Plaintiff.

17. Defendant Diocese of Buffalo had a duty to the Plaintiff to properly supervise Diocese of Buffalo priests to ensure that priests did not use their positions with the Diocese of Buffalo as a tool for grooming and assaulting vulnerable children. Defendant Diocese of Buffalo knew or should have known that Father Moss used his positions with the Diocese of Buffalo to sexually abuse minor children, including the Plaintiff.

Consequences of the Abuse

18. Plaintiff suffered personal physical and psychological injuries and

damages as a result of Father Moss' actions, as well as other damages related thereto, as a result of the childhood sexual abuse Plaintiff sustained.

19. As a direct result of the Defendants' conduct described herein, Plaintiff suffered and will continue to suffer great pain of mind and body, severe and permanent emotional distress, and physical manifestations of emotional distress. Plaintiff was prevented from obtaining the full enjoyment of life; has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling; and has incurred and will continue to incur loss of income and/or loss of earning capacity. As a victim of Father Moss' sexual abuse, Plaintiff is unable at this time to fully describe all of the details of that abuse and the extent of the harm she suffered as a result.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Negligent Hiring/Retention/Supervision/Direction

20. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 19 as if fully set forth herein.

21. Defendants owed a duty of care to all minor persons, including Plaintiff, who were likely to come within the influence or supervision of Father Moss in his role as priest, counselor, trustee, director, officer, employee, agent, servant and/or volunteer, to insure that Father Moss did not use his assigned position to injure minors by sexual assault, sexual abuse, or sexual contact in violation of the laws of the State of New York.

22. Defendant Diocese of Buffalo at all relevant times held the parishes of the Diocese of Buffalo out to be safe places for minors to attend, and its priests as individuals to whom it was safe to entrust the care of minor children. Defendant Diocese of Buffalo entered into an express and/or implied duty to safely treat Plaintiff and assumed the duty to protect and care for her.

23. Father Moss sexually assaulted, sexually abused, and/or had sexual contact with Plaintiff when Plaintiff was a minor in the Queen of Heaven rectory and in

Plaintiff's home.

24. Defendants negligently hired, retained, directed, and supervised Father Moss, though they knew or should have known that Father Moss posed a threat of sexual abuse to minors.

25. Defendants knew or should have known of Father Moss' propensity for the conduct which caused Plaintiff's injuries prior to, or at the time of, the injuries' occurrence.

26. Defendants were negligent in failing to properly supervise Father Moss.

27. The sexual abuse of children by adults, including priests, is a foreseeable result of negligence.

28. At all times material hereto, Defendants' actions were willful, wanton, malicious, reckless, negligent and/or outrageous in their disregard for the rights and safety of Plaintiff.

29. As a direct and proximate result, Plaintiff has suffered and will continue to suffer the injuries described herein.

30. By reason of the foregoing, the Defendants are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

SECOND CAUSE OF ACTION

Negligence/Gross Negligence

31. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 19 as if fully set forth herein.

32. Defendants knew, or were negligent in not knowing, that Father Moss posed a threat of sexual abuse to children.

33. The acts of Father Moss described hereinabove were undertaken, and/or enabled by, and/or during the course, and/or within the scope of his respective employment, appointment, assignment, and/or agency with Defendants.

34. Defendants owed Plaintiff, a minor at the relevant times of abuse, a duty to protect her from Father Moss' sexual deviancy and the consequential damages, both prior to and/or subsequent to Father Moss' misconduct.

35. Defendants' willful, wanton, grossly negligent and/or negligent act(s) of commission and/or omission, resulted directly and/or proximately in the damage set forth herein at length.

36. Defendants:

- a. gave improper or ambiguous orders or failed to make proper regulations, and/or employed improper persons or instrumentalities in work involving risk of harm to others;
- b. failed adequately to supervise the activities of Father Moss;
- c. permitted, and/or intentionally failed and/or neglected to prevent, negligent and/or grossly negligent conduct and/or allowed other tortious conduct by persons, whether or not their servants and/or agents and/or employees, upon premises or with instrumentalities under their control; and
- d. allowed the acts of omission and/or commission and/or any or all of the allegations set forth in this Complaint to occur.

37. At all times material hereto, with regard to the allegations contained herein, Father Moss was under the supervision, employ, direction and/or control of the Defendants.

38. At all times material hereto, Defendants' actions were willful, wanton, malicious, reckless, negligent and outrageous in their disregard for the rights and safety of Plaintiff, which amounted to conduct equivalent to criminality.

39. As a direct and/or indirect result of said conduct, Plaintiff has suffered and will continue to suffer the injuries and damages described herein.

40. By reason of the foregoing, the Defendants are liable to the Plaintiff, jointly,

severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

THIRD CAUSE OF ACTION

Breach of Non-Delegable Duty

41. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 19 as if fully set forth herein.

42. Plaintiff, when she was a minor, was placed in the care and supervision of the Defendants for the purposes of, *inter alia*, providing Plaintiff with a safe environment in which to participate in religious, educational, youth and recreational activities. There existed a non-delegable duty of trust between Plaintiff and the Defendants.

43. Plaintiff was a vulnerable child when placed within the care of the Defendants.

44. As a consequence, Defendants were in the best position to prevent Plaintiff's abuse, to learn of Father Moss' repeated sexual abuse of Plaintiff, and to stop it.

45. By virtue of the fact that Plaintiff was sexually abused as a minor child entrusted to the care of the Defendants, the Defendants breached their non-delegable duty to Plaintiff.

46. At all times material hereto Father Moss was under the supervision, employ, direction and/or control of the Defendants.

47. As a direct result of said conduct, Plaintiff has suffered and will continue to suffer the injuries and damages described herein.

48. By reason of the foregoing, the Defendants are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

FOURTH CAUSE OF ACTION**Breach of Fiduciary Duty**

49. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 19 as if fully set forth herein.

50. There exists a fiduciary relationship of trust, confidence, and reliance between Plaintiff and Defendants. This relationship is based on the entrustment of the Plaintiff while she was a minor child to the care and supervision of the agent or servant of the Defendants. This entrustment of the Plaintiff to the care and supervision of the Defendants, while the Plaintiff was a minor child, required the Defendants to assume a fiduciary relationship and to act in the best interests of the Plaintiff, as well as to protect her while she was a minor and vulnerable child.

51. Pursuant to their fiduciary relationship, Defendants were entrusted with the well-being, care, and safety of Plaintiff.

52. Pursuant to their fiduciary relationship, Defendants assumed a duty to act in the best interests of Plaintiff.

53. Defendants breached their fiduciary duty to Plaintiff.

54. At all times material hereto, the actions and/or inactions of Defendants were willful, wanton, malicious, reckless, negligent and outrageous in their disregard for the rights and safety of Plaintiff.

55. As a direct result of said conduct, Plaintiff has suffered and will continue to suffer the injuries and damages described herein.

56. By reason of the foregoing, the Defendants are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

FIFTH CAUSE OF ACTION**Negligent Infliction of Emotional Distress**

57. Plaintiff repeats and re-alleges each and every allegation set forth in

paragraphs 1 through 19 as if fully set forth herein.

58. As described above, the actions of Defendants, their agents, servants, and/or employees were conducted in a negligent and/or grossly negligent manner.

59. Defendants' actions endangered Plaintiff's safety and caused her to fear for her own safety.

60. As a direct and proximate result of Defendants' actions, which included but were not limited to negligent and/or grossly negligent conduct, Plaintiff suffered and will continue to suffer the severe injuries and damages described herein, including but not limited to, mental and emotional distress.

61. By reason of the foregoing, the Defendants are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

SIXTH CAUSE OF ACTION

Breach of Duty *in Loco Parentis*

62. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 19 as if fully set forth herein.

63. While she was a minor, Plaintiff was entrusted by her parents to the control of the Defendants, as well as directly to Father Moss, an agent or servant of the Defendants, for the purposes of *inter alia*, providing Plaintiff with appropriate guidance and an opportunity to enjoy educational and youth activities under responsible adult supervision. These Defendants owe — and owed — a duty to children entrusted to them to act *in loco parentis* and to prevent foreseeable injuries.

64. Defendants breached their duty to act *in loco parentis*.

65. At all times material hereto, Defendants' actions were willful, wanton, malicious, reckless, negligent, grossly negligent and/or outrageous in their disregard for the rights and safety of Plaintiff.

66. As a direct result of Defendants' conduct, Plaintiff has suffered and will

continue to suffer the injuries and damages described herein.

67. By reason of the foregoing, the Defendants are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

WHEREFORE Plaintiff, demands judgment against the Defendants on each cause of action as follows:

- A. Awarding compensatory damages in an amount to be proved at trial, but in any event in an amount that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction;
- B. Awarding punitive damages to the extent permitted by law;
- C. Awarding prejudgment interest to the extent permitted by law;
- D. Awarding costs and fees of this action, including attorneys' fees, to the extent permitted by law; and
- E. Awarding such other and further relief as to this Court may seem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: October 25, 2019
New York, New York

Respectfully Submitted,

/s/ Paul J. Hanly, Jr.
Paul J. Hanly, Jr.
phanly@simmonsfirm.com
Jayne Conroy
jconroy@simmonsfirm.com
Andrea Bierstein
abierstein@simmonsfirm.com
SIMMONS HANLY CONROY LLC

112 Madison Avenue
New York, NY 10016
(212) 784-6401 Telephone
(212) 213-5949 Facsimile

Attorneys for Plaintiff

Of counsel:

Mitchell Garabedian

mgarabedian@garabedianlaw.com

William H. Gordon

wgordon@garabedianlaw.com

LAW OFFICES OF MITCHELL GARABEDIAN

100 State Street, 6th Floor

Boston, MA 02109

Phone: (617) 523-6250